

1995

David Hales v. Sandra Gillman Hales : Brief of Appellee

Utah Court of Appeals

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CKET NO. 950581-CA

IN THE UTAH COURT OF APPEALS

DAVID HALES,

)

Plaintiff,

)

Case No. 95 0581-CA

vs.

)

SANDRA GILLMAN HALES,

)

Priority No. 15

Defendant.

)

BRIEF OF APPELLEE

**Appeal from the Decree of Divorce Entered
by the Fourth Judicial District Court, Utah County, State of Utah
Judge Ray M. Harding**

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FILED

APR - 5 1996

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vs.)	
SANDRA GILLMAN HALES,)	Priority No. 15
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IN THE UTAH COURT OF APPEALS

DAVID HALES,)	
)	
Plaintiff,)	Case No. 95 0581-CA
)	
vs.)	
)	
SANDRA GILLMAN HALES,)	Priority No. 15
)	
Defendant.)	

BRIEF OF APPELLEE

STATEMENT OF JURISDICTION

The court has jurisdiction of this appeal pursuant to UTAH CODE ANN. § 78-2a-3(2)(i) (Supp. 1995).

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the trial court's findings of fact with respect to alimony are adequate.

Standard of Appellate Review: Abuse of discretion. *Schaumberg v. Schaumberg*, 875 P.2d 598, 602 (Utah App. 1994).

DETERMINATIVE STATUTE

UTAH CODE ANN. § 30-3-5 (Supp. 1995), a copy of which is attached hereto as Addendum A.

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings, and Disposition in the Court Below

This action for divorce was filed on August 12, 1991, by plaintiff/appellee David Hales (“Mr. Hales”) against defendant/appellant Sandra Gillman Hales (“Ms. Hales”). The case was tried before Judge Ray M. Harding on December 9, 1992, and January 12, 1993. At the end of trial, the court ordered Mr. Hales to pay child support of \$750 per month and alimony in the amount of \$1,250 per month. The personal property of the parties was divided, Ms. Hales was awarded the parties’ residence, and Mr. Hales was awarded the business. The court entered its original findings of fact, conclusions of law, and decree of divorce on February 24, 1993. Ms. Hales appealed and Mr. Hales cross-appealed.

On September 27, 1994, this Court entered its order remanding the case to the trial court for additional findings of fact and reconsideration of the alimony award based on those findings.

On July 6, 1995, Judge Harding of the Fourth Judicial District Court entered a “Memorandum Decision and Additional Findings of Fact and Conclusions of Law” (hereinafter referred to as “Additional Findings,” a copy of which is attached hereto as Addendum B), again requiring Mr. Hales to pay child support of \$750 and alimony in the amount of \$1,250 per month. The court adopted its previous decree of divorce, a copy of which is attached hereto as Addendum C.

On August 3, 1995, Ms. Hales filed her second notice of appeal.

Statement of Facts Material to this Appeal

1. These parties were married December 21, 1967. They had two children, a son and a daughter. At the time of trial, their daughter was no longer a minor. The minor son, Corbin, resided with his mother.

2. At the time of trial, Mr. Hales was 49 years old and Ms. Hales was 46 years old and in good health.

3. Mr. Hales operated an automobile wrecking business. (Addendum B, Additional Findings, ¶ 3.)

4. During their separation, Mr. Hales paid Ms. Hales \$2,167 per month. In addition, Mr. Hales paid the house payment of \$360 per month. (Trial Transcript, p. 19.)

5. The trial court found that Mr. Hales' gross monthly income was \$8,333. (Addendum B, Additional Findings, ¶ 3.)

6. The court also found that Ms. Hales had been a full-time housewife and mother during the marriage, that she had one year of college training, and had been employed for a brief period in Mr. Hales' business. (Addendum B, Additional Findings, ¶ 4.)

7. The trial court ordered Mr. Hales to pay child support of \$750 per month and to provide medical and life insurance for the benefit of the parties' minor child. (Addendum B, Additional Findings, ¶¶ 7 and 8.)

8. The court awarded Ms. Hales the marital residence in Pleasant Grove with an equity of approximately \$60,000 and awarded the business with an equity of approximately \$44,000 to Mr. Hales. (Addendum B, Additional Findings, ¶ 9.)

9. The court ordered a boat owned by the parties, with a value of \$180,000, to be sold and the proceeds to be shared equally between the parties, or, in the alternative, Mr. Hales could elect to pay Ms. Hales \$90,000 for her interest in the boat. (Addendum B, Additional Findings, ¶ 10.)

10. The court ordered Mr. Hales to pay all the debts of the parties, including the following:

- a) Mortgage on the business located at 1775 South State Street, Orem, Utah, approximately \$111,772.00;
- b) All other documented debts associated with the business located at 1775 South State Street, Orem, Utah;
- c) First Security Bank credit line, approximately \$40,000.00 at \$335.00 per month;

- d) R.C. Willey credit line, approximately \$300.00 at \$25.00 per month;
- e) Visa credit card balance, approximately \$790.98 at \$25.00 per month;
- f) Mastercard credit card balance, approximately \$3951.22 at \$150.00 per month;
- g) Boat slip obligation, at approximately \$305.00 per month;
- h) All costs associated with Corbin's tennis expenses which have not yet been paid and are outstanding, whether on a credit card balance or as a loan not the subject of the other debts and obligations the Plaintiff is to assume set forth above;
- i) All other documented personal debts presently outstanding incurred by the parties.

(Addendum B, Additional Findings, ¶ 11.)

11. Ms. Hales was not required to pay any debts, except the first mortgage on the house of approximately \$25,000. Further, the court awarded Mr. Hales personal property valued at \$35,673 and Ms. Hales personal property valued at \$38,427. (Addendum B, Additional Findings, ¶¶ 13, 14.)

12. The trial court found that the parties had enjoyed a comfortable lifestyle during the marriage, and that Ms. Hales could continue to enjoy a similar lifestyle with an alimony award of \$1,250 per month, a child support award of \$750 per month, the IRA funds awarded to her, the equity in the home, and the \$90,000 she would receive as her share of the value of the boat. The court indicated that it took into account its award of attorneys' fees in making its alimony finding. In addition, the court found that, although Ms. Hales had no specific job skills, "she is not precluded from obtaining employment or reeducating herself in order to find some form of suitable full-time employment." (Addendum B, Additional Findings, ¶ 15.)

13. Mr. Hales was ordered to pay Ms. Hales' attorney's fees in the amount of \$8,000. (Addendum B, Additional Findings, ¶ 17.)

14. The trial court also specifically incorporated its previous findings of fact made in February 1993, insofar as they were not superseded by its additional findings.

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in making its alimony award to Ms. Hales. The trial court properly considered the three factors required to be considered in making such an award and specifically found that its alimony award, together with the other sources of income available to Ms. Hales, would allow her to continue to enjoy the lifestyle the parties enjoyed during the marriage. The trial court was not required to equalize the parties' gross or net incomes. Ms. Hales' argument amounts to an attack on the trial court's findings of fact; however, she has not marshaled the evidence in support of the findings of fact she must if she wishes to attack the sufficiency of the evidence supporting those findings.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING \$1,250 PER MONTH ALIMONY TO MS. HALES.

A. The Trial Court's Findings Took into Consideration the Three Factors Necessary To Support an Alimony Award.

As Ms. Hales has pointed out in her brief, a trial court must specifically consider the following three factors in determining whether to award alimony and the amount to be awarded:

1. the financial condition and needs of the party seeking alimony;
2. that party's ability to produce sufficient income for him or herself;
- and
3. the ability of the other party to provide support.

Thronson v. Thronson, 810 P.2d 428, 435 (Utah App. 1991) (citations omitted). The general purpose of alimony is to prevent the receiving spouse from becoming a public charge and to maintain to the extent possible the standard of living enjoyed during the marriage. *Howell v. Howell*, 806 P.2d 1209, 1212 (Utah App. 1991), *cert. denied* 817 P.2d 327 (Utah 1991).

In this case, Ms. Hales introduced an exhibit indicating that her monthly expenses were \$4,483.28 and that she had no income (Defendant's Exhibit 11, a copy of which is attached hereto as Addendum D). However, a trial court is entitled to make its own determination of the reasonable needs of a party and is not required to accept without question her assertion that all of her expenses are reasonable and necessary. It is obvious in this case that many of the expenses Ms. Hales claimed to have were inflated. For example, despite the fact that Ms. Hales had no employment, she claimed to need \$120 per month for housecleaning and fish tank maintenance. She claimed to have \$364 per month in credit card payments and to have \$250 per month in uninsured medical and dental costs and \$291 per month in maintenance expense for her Jaguar automobile. Ms. Hales claimed that she needed \$270 per month for gifts and Christmas in addition to her credit card payments, and \$225 per month for clothing, also in addition to her credit card bills. Ms. Hales also claimed to have "tennis expenses" for her son Corbin of \$1,111.83 per month. Corbin no longer plays tennis, so those expenses are not a part of Ms. Hales' "needs."

When Ms. Hales' expenses are examined and the inflated items are decreased or deleted, the trial court could easily have found that she could live on the amount of alimony she was to receive, together with income from her potential employment and income from the assets awarded to her. For example, the trial court's award of the marital residence to Ms. Hales kept her housing costs down, since her mortgage payment was only \$366 per month. Likewise, Mr. Hales was required to pay all the debts and obligations of the parties. Thus, the credit card payments of \$364 per month are not properly considered as expenses in awarding alimony.

Counsel for Ms. Hales has ignored the second tier of the alimony analysis set forth above--the ability of the receiving spouse to provide income for herself. In this case, Ms. Hales received \$90,000 in cash. If she were to receive 8% interest on that amount, she would have additional income of \$600 per month. Even if Ms. Hales were to obtain only a

minimum wage job, she would have an additional \$737 per month in income from her employment.

The trial court specifically took those sources of income into account in finding that \$1,250 alimony, plus the other income, was adequate to meet her reasonable needs. (Addendum B, Additional Findings, ¶ 15.)

Ms. Hales argues that the trial court is required to consider the parties' standard of living during the marriage as discussed in *Howell* and other cases. In fact, the trial court in this case did consider the lifestyle of the parties during the marriage. The trial court said:

The parties enjoyed a comfortable lifestyle during the marriage, and the Court finds that Defendant is capable of continuing to enjoy a similar lifestyle with an alimony award of \$1,250.00, a child support award of \$750.00, the IRA funds awarded her, the equity in the house, and the proceeds she will receive as a result of Plaintiff's election regarding the Carver boat (approximately \$90,000.00).

(Addendum B, Additional Findings, ¶ 15.)

In *Morgan v. Morgan*, 854 P.2d 559 (Utah App. 1993), the appellant argued that the trial court had abused its discretion in awarding alimony. The findings of fact made by the trial court in that case were very similar to those made in this case. In *Morgan*, the trial court had made these findings:

9. The Court finds that [Mrs. Morgan] and [Dr. Morgan] have been married for thirty-seven years and that during the marriage [Mrs. Morgan's] role was that of homemaker, having raised five children born as issue of the marriage. After working to support the couple while [Dr. Morgan] was attending dental school, [Mrs. Morgan] has not worked outside of the home. . . . The Court finds that the income that will be generated to [Mrs. Morgan] from the Bel-Aire Apartments and the stocks awarded to her will not be sufficient to allow her to maintain the post-marital lifestyle that [Dr. Morgan] will be able to enjoy nor will it allow her to maintain the lifestyle and standard of living which she enjoyed during the course of the marriage. The Court finds . . . that [Mrs. Morgan] has a current need for alimony in the amount of \$2000 per month, which should be paid for two years from the date of entry of Decree; thereafter, alimony shall be reduced to \$1,700 per month on the assumption that Dr. Morgan's income from his dental practice is likely to decline somewhat because of his age. The Court

[is] of the opinion that the only asset of the parties which [Mrs. Morgan] was able to manage and would produce income for her was the Bel-Aire Apartments. While this [is] an extremely complicated and difficult case to separate the assets of the parties, it was clear that the asset management ability of the parties and the expertise involved in financial affairs was that of [Dr. Morgan]. In view of the long marriage and the history of the parties as set forth herein, it was felt that a modest amount of alimony should be required for a period of time to bridge [Mrs. Morgan] into single life but at the same time she should be required to learn to manage the Bel-Aire property and to produce some income for her own benefit.

. . . .

The Court finds that [Dr. Morgan] will have substantially greater income from his dental practice and partnership investments. The Court finds that [Dr. Morgan] has a current ability [to pay] alimony in the amount of \$2000 per month, which should be paid for two years from the date of entry of Decree; thereafter, alimony shall be reduced to \$1,700 per month on the assumption that Dr. Morgan's income from his dental practice is likely to decline somewhat because of his age.

Id. at 567-8.

In *Morgan*, the trial court had not made a specific finding as to the exact amount of the wife's expenses. Rather, the trial court made a general finding as to the amount of alimony she would need in order to maintain the standard of living the parties had during the marriage. This Court found those findings to be adequate. Likewise, in this case, the court made a general finding as to the amount of alimony Ms. Hales would need to maintain the standard of living enjoyed by the parties during the marriage. The trial court should not be required to include in its findings the exact expenses of the parties or the amount of net income of the parties. Nothing in Utah case law mandates that the findings of fact set forth the calculations; rather, the cases require that the trial court consider the three alimony factors set forth in *Jones v. Jones*, 700 P.2d 1072 (Utah 1985). In this case, the trial court did so.

Further, this Court can affirm the trial court's decision even if the specific findings about Ms. Hales' needs are absent, if the absent findings can reasonably be implied.

Unstated findings can be implied if it is reasonable to assume that the trial court actually considered the controverted evidence and necessarily made a finding to resolve that controversy, but simply failed to record the factual

determination it made. *See State v. Ramirez*, 817 P.2d 774, 787-88 n. 6 (Utah 1991). *See also Adams v. Board of Review*, 821 P.2d 1, 5 (Utah App. 1991).

Hall v. Hall, 858 P.2d 1018, 1025 (Utah App. 1993).

In the present case, it is obvious that the trial court actually considered the controverted evidence as to Ms. Hales' reasonable expenses. In fact, it was expressly directed to do so by this Court on remand. On remand, the trial court substantially expanded its findings of fact with respect to alimony as directed by the court and necessarily considered Ms. Hales' needs in finding that "Defendant is capable of continuing to enjoy a similar lifestyle with an alimony award of \$1,250.00, a child support award of \$750.00, the IRA funds awarded her, the equity in the house, and the proceeds she will receive as a result of Plaintiff's election regarding the Carver boat (approximately \$90,000.00)." (Addendum B, Additional Findings, ¶ 15.)

B. The Trial Court Properly Found that the Alimony Award Equalizes Mr. Hales' and Mrs. Hales' Standards of Living.

Appellant argues that the court did not equalize the parties' standards of living because, after paying taxes, Mr. Hales would have more disposable income than Ms. Hales. However, the trial court made no findings of fact as to Mr. Hales' net income or the amount that would be available to him after payment of debts.

Further, the calculations offered by Ms. Hales ignore completely the income from employment, which the court found she would have, and the income from investment of her assets, which the trial court also took into account.

The trial court in this case found that its alimony award would allow Ms. Hales to maintain the standard of living she had during the marriage. If in fact Ms. Hales' real needs were less than the \$4,400 she claimed, the trial court was correct. Such a finding is implicit in the court's decision, particularly when the court was called upon specifically by this Court to address that issue.

In *Munns v. Munns*, 790 P.2d 116 (Utah App. 1990), the wife argued that the court erred in only awarding her \$300 per month as alimony. In that case, the parties had been

married for thirty-eight years and had twelve children, three of whom were still minors at the time the divorce was filed. The wife was 58 years old and had not worked outside the home during the marriage. The trial court, in its findings of fact, recognized that the wife had not worked outside the home, but found she was capable of employment. The trial court specifically found that the husband made \$13.90 per hour, but that there were substantial marital debts. The trial court granted the wife \$300 per month alimony based on “. . . the debts, the duration of payment, duration of the marriage, plaintiff’s lack of work experience and employment skills, recognizing the ages of the children, the eventual receipt of social security and retirement benefits, together with income realized from the properties.” *Id.* at 116. Based on that finding, this Court said, “[u]pon a review of the record, including these findings, it is apparent to us that the trial court did consider the three *Jones* factors in determining the amount of alimony.” *Id.* at 121. Thus, in *Munns*, even though the court did not make a specific finding as to the exact amount of the wife’s expenses, the exact amount she could earn, or the exact amount of income she would receive from rental properties, the alimony award was affirmed because it was clear the trial court had considered the proper factors.

Appellant attempts to confuse the concept of equalizing the parties’ standards of living with equalizing the parties’ net incomes. Appellant cites *Howell*, 806 P.2d 1209, in support of the proposition that the trial court should attempt to equalize the parties’ incomes. However, the court in *Howell* did not hold that such equalization is necessary. In *Howell*, the court compared the parties’ gross monthly incomes and noted that there was a substantial disparity between them, but did not hold that the trial court must equalize the parties’ incomes. “Exact mathematical equality of income is not required, but sufficient parity to allow both parties to be on an equal footing financially as of the time of the divorce is required.” *Id.* at 1213, fn. 3.

It appears that Ms. Hales is attempting indirectly to challenge the sufficiency of the evidence supporting the trial court’s finding of fact that a \$1,250 per month alimony award

adequately meets her needs. In doing so, it is her burden to marshal all of the evidence in favor of that finding and then demonstrate that, even when the evidence is reviewed in the light most favorable to the trial court's decision, the evidence is insufficient to support the finding. *Reed v. Reed*, 806 P.2d 1182, 1184 (Utah App. 1991). In this case, as in *Reed*, the appellant "has not shouldered the burden necessary to overturn the findings of the trial court." *Id.* at 1184.

For example, Ms. Hales argues that the parties enjoyed a comfortable standard of living during their marriage, which Ms. Hales is not capable of maintaining on her own. In fact, the trial court found that Ms. Hales could not maintain the comfortable standard of living without alimony, but found that she could maintain that standard of living with a \$1,250 per month alimony award. Ms. Hales has not properly marshaled the evidence in support of that finding; rather, she simply disagrees with it. That disagreement does not excuse Ms. Hales from marshaling the evidence in favor of the court's finding.

Ms. Hales also argues that Mr. Hales' expenses were minimal. However, the fact that Mr. Hales had been able to postpone the payment of rent to his parents and that they had absorbed his utility costs during the parties' separation so that he was able to provide temporary support to Ms. Hales does not mean that Mr. Hales has no living expenses. Further, the trial court should attempt to equalize the parties' standards of living, not to provide Ms. Hales with a standard of living superior to that of Mr. Hales. If the court were to equalize the parties' net incomes as suggested by Ms. Hales, Mr. Hales would have a lower standard of living because of the necessity for him to pay the family debts. The trial court is clearly entitled to take into account the entire financial situation of the parties in determining how much alimony to award. This Court has indicated that, "alimony may not be automatically awarded whenever there is disparity between the parties' incomes." *Burt v. Burt*, 799 P.2d 1166, 1170 (Utah App. 1990).

It is the trial court's prerogative to examine the parties' financial situation and award alimony if the situation merits it. "In an action for divorce, the trial court has considerable

discretion to provide for spousal support, and this Court will not interfere with the trial court's award of such support in a divorce proceeding absent a showing of a clear and prejudicial abuse of discretion." [Footnotes omitted.] *Paffel v Paffel*, 732 P.2d 96 (Utah 1986). In this case, the trial court properly considered the three required factors and made an award of alimony that would allow Ms. Hales to maintain the standard of living which she enjoyed during the marriage. Ms. Hales has not attacked the sufficiency of the evidence that support that finding. For that reason, the trial court's order should be affirmed.

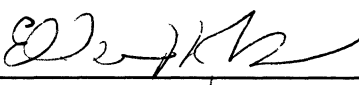
CONCLUSION

The trial court did not abuse its discretion in awarding alimony in this case. The trial court took into account the three factors required by Utah cases beginning with *Jones*, 700 P.2d 1072. Further, the trial court found that the alimony award, together with Ms. Hales' ability to earn income, income from her investments, and the other properties awarded to her, would be sufficient for her to maintain the same standard of living she had during the marriage. Ms. Hales did not attack the sufficiency of the evidence supporting the court's findings of fact.

The trial court's award of alimony is supported by adequate factual findings and should be affirmed. Because this appeal was unnecessary, no attorney's fees should be awarded.

DATED this 5 day of April, 1996.

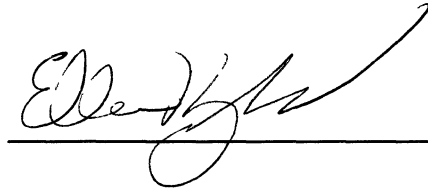
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CERTIFICATE OF SERVICE

I hereby certify that I mailed two true and correct copies of the foregoing **BRIEF OF APPELLEE** to the following, postage prepaid, this 5th day of April, 1996:

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Tab A

30-3-4. Pleadings — Findings — Decree — Use of affidavit — Sealing.

(1) (a) The complaint shall be in writing and signed by the plaintiff or plaintiff's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause. If the decree is to be entered upon the default of the defendant, evidence to support the decree may be submitted upon the affidavit of the plaintiff with the approval of the court.

(c) If the plaintiff and the defendant have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program shall be administered, a decree of divorce may not be granted until both parties have attended a mandatory course provided in Section 30-3-11.3 and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall enter the decree upon the evidence or, in the case of a decree after default of the defendant, upon the plaintiff's affidavit.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree.

History: R.S. 1898 & C.L. 1907, § 1211; L. 1909, ch. 60, § 1; C.L. 1917, § 2999; R.S. 1933 & C. 1943, 40-3-4; L. 1957, ch. 55, § 1; 1961, ch. 59, § 1; 1969, ch. 72, § 2; 1983, ch. 116, § 1; 1985, ch. 151, § 1; 1989, ch. 104, § 1; 1990, ch. 230, § 1; 1991, ch. 5, § 35; 1992, ch. 98, § 1; 1992, ch. 290, § 3; 1995, ch. 62, § 1.

Amendment Notes. — The 1995 amendment, effective July 1, 1995, added the second sentence of Subsection (1)(b) and in the second sentence of Subsection (1)(d) substituted "shall enter the decree" for "shall make and file findings and decree" and added the language beginning "or, in the case of" at the end.

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Determination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

- (c) pursuant to Section 15-4-6.5:
 - (i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;
 - (ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and
 - (iii) provisions for the enforcement of these orders;
 - (d) provisions for income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5; and
 - (e) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional \$7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5.
- (2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.
- (3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.
- (4) (a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.
- (b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a visitation schedule a provision, among other things, authorizing any peace officer to enforce a court ordered visitation schedule entered under this chapter.
- (5) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.
- (6) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.
- (7) (a) The court shall consider at least the following factors in determining alimony:
- (i) the financial condition and needs of the recipient spouse;
 - (ii) the recipient's earning capacity or ability to produce income;
 - (iii) the ability of the payor spouse to provide support; and
 - (iv) the length of the marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this subsection.

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(8) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(9) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

History: R.S. 1898 & C.L. 1907, § 1212; L. 1909, ch. 109, § 4; C.L. 1917, § 3000; R.S. 1933 & C. 1943, 40-3-5; L. 1969, ch. 72, § 3; 1975, ch. 81, § 1; 1979, ch. 110, § 1; 1984, ch. 13, § 1; 1985, ch. 72, § 1; 1985, ch. 100, § 1; 1991, ch. 257, § 4; 1993, ch. 152, § 1; 1993, ch. 261, § 1; 1994, ch. 284, § 1; 1995, ch. 330, § 1.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, deleted a provision from Subsection (3) for support and maintenance orders; deleted former Subsections (5) and (6), providing that alimony terminates

upon remarriage, or cohabitation with a member of the opposite sex, by the payee; added Subsections (7) to (9); renumbered former Subsections (7) and (8) as (5) and (6); and made stylistic changes.

Compiler's Notes. — Laws 1995, ch. 330, which amended this section, provides in § 2 that the Legislature does not intend that termination of alimony based on cohabitation, in accordance with Subsection (9), "be interpreted in any way to condone such a relationship for any purpose."

CHAPTER 5

GRANDPARENTS

Section
30-5-2. Visitation rights of grandparents.

30-5-2. Visitation rights of grandparents.

(1) The district court may grant grandparents reasonable rights of visitation, if it is in the best interest of the grandchildren, in cases where a grandparent's child has died or has become a noncustodial parent through divorce or legal separation.

(2) Grandparents may petition the court as provided in Section 78-32-12.2 to remedy a parent's wrongful noncompliance with a visitation order.

History: C. 1953, 30-5-2, enacted by L. 1977, ch. 123, § 2; 1993, ch. 152, § 2; 1995, ch. 257, § 1.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, deleted "and other

immediate family members" from both subsections and in Subsection (1) substituted "grandchildren" for "children" and added the clause beginning "in cases" to the end.

CHAPTER 6

COHABITANT ABUSE ACT

Section
30-6-1. Definitions.
30-6-2. Abuse or danger of abuse — Protective orders.
30-6-3. Venue of action.
30-6-4. Forms for petitions and protective orders — Assistance.
30-6-4.1. Continuing duty to inform court of other proceedings — Effect of other proceedings.
30-6-4.2. Protective orders — Ex parte protective orders — Modification of orders — Duties of the court.
30-6-4.3. Hearings on ex parte orders.
30-6-4.4. No denial of relief solely because of lapse of time.

Section
30-6-4.5. Mutual protective orders prohibited.
30-6-4.6. Prohibition of court-ordered or court-referred mediation.
30-6-4.8. Electronic monitoring of domestic violence offenders.
30-6-5 to 30-6-7. Repealed.
30-6-8. Statewide domestic violence network — Peace officers' duties — Prevention of abuse in absence of order — Limitation of liability.
30-6-9, 30-6-10. Repealed.
30-6-11. Division of Family Services — Development and assistance of volunteer network.

Tab B

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

DAVID HALES,	Plaintiff,	MEMORANDUM DECISION AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
vs.		
SANDRA GILLMAN HALES,	Defendant.	CASE NO. 914401506
		DATE: July 6, 1995
		JUDGE: RAY M. HARDING
		LAW CLERK: Laura Cabanilla
		DEPUTY CLERK: Georgia Snyder
		EXTERN: Andrew Pickering

The above-entitled matter came on regularly for trial before the Court on December 9, 1992 and was thereafter continued to January 12, 1993 at which time trial, following argument of counsel for the parties, was concluded. The Court heard and considered the evidence and testimony presented by the parties and entered its Findings of Fact and Conclusions of Law on February 24, 1993.

The matter was thereafter appealed and cross-appealed to the Utah Court of Appeals and on September 27, 1994, the Utah Court of Appeals entered its conclusion and decision, remitting the case for the entry of additional findings of fact and reconsideration of the awards based on those findings.

The Court, pursuant to the decision of the Utah Court of Appeals that additional findings be made in this matter, with reconsideration of all awards based on those findings, makes and enters the following Additional Findings of Fact and Additional Conclusions of Law.

ADDITIONAL FINDINGS OF FACT

1. Plaintiff and Defendant are residents of Utah County, State of Utah, and have been for more than three months prior to filing this divorce action.
2. Plaintiff and Defendant were married on December 21, 1967 in Orem, Utah.
3. Plaintiff was 49 years old at the time of trial, and has been self-employed at Myrons Auto Wrecking, 1775 South State Street, Orem, Utah, since February, 1980. Plaintiff is employed on a full-time basis. The Court finds that Plaintiff's gross monthly income is \$8,333.00.
4. The Court finds that Defendant's role within the family during the course of the marriage has been that of a full-time housewife and mother. Defendant was 46 years old at the time of trial, is a high school graduate with one year of college training, and has been a full-time housewife and mother during the marriage. Defendant has been employed during the marriage for a brief period of time while helping Plaintiff when the parties' business operations commenced. Defendant currently has no monthly income from employment.
5. The Court finds that during the course of the marriage the parties had two children: a daughter, Angila, born November 22, 1968; and a son, Corbin, born July 19, 1978. At the time of trial, Angila had reached the age of majority, and is not a consideration in the determination of any awards made. However, at the time of trial Corbin had not reached the age of majority.
6. The Court finds that the stipulation for custody and visitation which the parties have entered into with regard to their minor son Corbin is fair, just, and equitable and in the child's best interests. Each of the parties should be awarded joint legal custody of Corbin, with the Defendant being awarded the primary physical custody subject to Plaintiff's rights to reasonable visitation.
7. Based on findings that Plaintiff has a gross monthly income of \$8,333.00 and that Defendant has no gross monthly income, the Court finds that Plaintiff is to pay child support

in the amount of \$750.00 per month. This award is to be paid to the Defendant on the first of each month. Child support shall continue until the attainment by Corbin of the age of eighteen years or his graduation from high school with his regular graduating class, whichever is later.

8. The Court finds that Plaintiff is able to provide insurance on behalf of Corbin through his employment opportunities; however, Defendant is unemployed and has no easy access to insurance. Therefore, it is reasonable and just that Plaintiff maintain his present medical and life insurance for the benefit of Corbin. The Court also finds that Plaintiff is to name Corbin as beneficiary of the term life insurance policy which he currently maintains. It is reasonable and just that each party be liable for one-half of all of Corbin's medical expenses not covered by insurance.

9. The Court finds that the parties' equity interests in the business located at 1775 South State Street, Orem, Utah, (equity interest approximately \$44,000.00) and the house located at 1595 East 480 South, Pleasant Grove, Utah, (equity interest approximately \$60,000.00) are essentially equal. Furthermore, Plaintiff has had substantial experience in business operations, while Defendant has had very little business experience. Therefore, the Court finds that it is reasonable and just to award all right, title and interest in and to the business to Plaintiff, subject to the mortgage on that property, and to award all right, title, and interest in and to the house to Defendant, subject to the mortgage on that property.

10. Pursuant to the stipulation of the parties, the Court finds the Carver boat to have a value of \$180,000.00. It is reasonable and just that the Carver boat be sold, and the proceeds equally divided between the parties, or if the Plaintiff elects, he may retain the boat and pay \$90,000.00 to Defendant. Plaintiff shall make such election and payment, if any, within 90 days of the date of the decree.

11. The Court further finds that it is reasonable and just that Plaintiff assume the following debts and obligations and hold Defendant harmless therefrom:

- (a) Mortgage on the business located at 1775 South State Street, Orem, Utah, approximately \$111,772.00;
- (b) All other documented debts associated with the business located at 1775 South State Street, Orem, Utah;
- (c) First Security Bank credit line, approximately \$40,000.00 at \$336.00 per month;
- (d) R.C. Willey credit line, approximately \$300.00 at \$25.00 per month;
- (e) Visa credit card balance, approximately \$790.98 at \$25.00 per month;
- (f) Mastercard credit card balance, approximately \$3951.22 at \$150.00 per month;
- (g) Boat slip obligation, at approximately \$305.00 per month;
- (h) All costs associated with Corbin's tennis expenses which have not yet been paid and are outstanding, whether on a credit card balance or as a loan not the subject of the other debts and obligations the Plaintiff is to assume set forth above;
- (i) All other documented personal debts presently outstanding incurred by the parties.

12. The Court finds that it is reasonable and just that Defendant assume the following debts and obligation and hold Plaintiff harmless therefrom:

- (a) First mortgage on the house at 1595 East 480 South, Pleasant Grove, Utah, approximately \$25,000.00 at \$366.00 per month.

13. The Court finds that it is reasonable and just that Plaintiff be awarded the following personal property:

- (a) The IRA currently in his name, valued at \$4,223.00;
- (b) The 1989 Ford truck, valued at \$5,000.00;
- (c) Jewelry valued at \$2,500.00;
- (d) The GlasTron (small) boat, valued at \$8,000.00;

(e) The Keough account, valued at \$15,950.00.

The combined value of the personal property so awarded is \$35,673.00.

14. The Court finds that it is reasonable and just that Defendant be awarded the following personal property:

(a) The 1987 Jaguar XJS, valued at \$11,500.00;

(b) The home furnishings associated with the house at 1595 East 480 South, Pleasant Grove, Utah, valued at \$20,000.00;

(c) Jewelry valued at \$5,000.00;

(d) The IRA currently in her name, valued at \$1,927.00.

The combined value of the personal property so awarded is \$38,427.00. The Court finds that this award is fair and equitable in light of the distribution of the business and associated property and the house between the parties.

15. Based on the above findings regarding the parties' respective monthly income and earning potential, the Court finds that Plaintiff is able to provide support for Defendant in the form of alimony. The parties enjoyed a comfortable lifestyle during the marriage, and the Court finds that Defendant is capable of continuing to enjoy a similar lifestyle with an alimony award of \$1,250.00, a child support award of \$750.00, the IRA funds awarded her, the equity in the house, and the proceeds that she will receive as a result of Plaintiff's election regarding the Carver boat (approximately \$90,000.00). In addition, the Court's findings regarding attorney's fees as set out below are taken into account in making this finding. The Court finds further that though Defendant has no specific job skills, she is not precluded from obtaining employment or reeducating herself in order to find some form of suitable full-time employment. Therefore, considering the division of property, the circumstances and needs of the parties as well as Plaintiff's ability to provide support, the Court finds that Defendant is entitled to a permanent alimony award in the amount of \$1,250.00 per month. This alimony award shall continue until the death of either of the parties, the Defendant's remarriage, or the

Defendant's cohabitation with a person of the opposite sex, and shall be paid on the first day of each month.

17. Based on the respective needs of the parties and the previously entered findings as to income, debt assumption, and property distribution, the Court finds that Defendant has hired an attorney to represent her in this matter, and is in less of a position to be able to pay attorney's fees. Therefore, Defendant is to be awarded judgment for reasonable attorney's fees in the amount of \$8,000.00.

18. All other Findings of Fact previously made by the Court as entered February 24, 1993 which are not specifically superseded by these additional findings are adopted herein, and are found to be fair, just, and equitable.

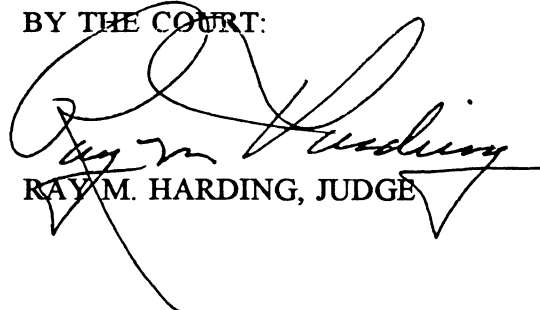
Based on the foregoing Additional Findings of Fact, the Court makes and enters the following:

ADDITIONAL CONCLUSIONS OF LAW

1. The Court adopts herein in all respects the Conclusions of Law and Decree of Divorce previously made and entered on February 24, 1993.

Dated this 6th day of July, 1995.

BY THE COURT:



RAY M. HARDING, JUDGE

cc: Clark W. Sessions, Esq.
Thomas V. Rasmussen, Esq.

Tab C

THOMAS V. RASMUSSEN, #2693
RONALD C. WOLTHUIS, #4699
MORTON, SKEEN & RASMUSSEN
Attorney for Plaintiff
1245 Brickyard Road, Suite 600
Salt Lake City, Utah 84106
Telephone: (801) 484-3000

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH

DAVID HALES,)	
)	DECREE OF DIVORCE
Plaintiff,)	
)	
vs.)	Civil No. 91-4401406DA
)	
SANDRA GILLMAN HALES,)	Judge Ray M. Harding
)	
Defendant.)	

The above-entitled matter came on regularly for trial before the Honorable Ray M. Harding on the 9th day of December, 1992 and was thereafter continued to the 12th day of January, 1993 at which time trial was concluded. Plaintiff appeared in person at all stages of the trial and was represented by his counsel Thomas V. Rasmussen. Defendant appeared in person at all stages of the trial and was represented by her counsel Clark W. Sessions. Both parties provided evidence and testimony to the Court after which the Court took this matter under advisement. Having reviewed the file in this matter and having reviewed all evidence presented and the testimony of the parties and their respective witnesses, and the Court having previously entered and executed its Findings of Fact

and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff is awarded a Decree of Divorce from Defendant on the grounds of irreconcilable differences, the same to become final upon execution and entry herein.

2. Each of the parties are awarded the joint legal custody of the parties minor child with Defendant being awarded primary physical custody, subject to Plaintiff's rights to reasonable and liberal visitation.

3. Plaintiff is ordered to pay existing expenses for "tennis" which have not been paid and are outstanding as a credit card balance or loan. In the event Plaintiff fails to pay said sums, said sums shall be reduced to judgment.

4. Plaintiff is ordered to assume and pay all documented business and personal debts presently outstanding and shall hold Defendant harmless from liability thereon with the exception of the first mortgage on the parties' home which is to be assumed and paid by Defendant holding Plaintiff harmless from liability thereon.

5. Plaintiff is ordered to maintain present medical and life insurance coverage for the benefit of the parties' minor child. Plaintiff is ordered to name the parties' minor child as beneficiary of the life insurance policy. Each party shall be responsible for payment of one-half of all the minor child's medical expenses not covered by insurance.

6. Defendant is awarded the parties' home free and clear of any claim by Plaintiff subject to her assumption of the first mortgage thereon.

7. Plaintiff is awarded his business and property associated therewith free from any claim from Defendant subject to assumption of all encumbrances thereon.

8. Each of the parties are awarded the following personal property:

To the Plaintiff:	IRA	\$4,223.00
	Truck	5,000.00
	Jewelry	2,500.00
	Boat (GlasTron)	8,000.00
	Keough	15,950.00

To the Defendant:	Jaguar	\$11,500.00
	Home Furnishings	20,000.00
	Jewelry	5,000.00
	IRA	1,927.00

9. The parties are ordered to sell the Carver boat which has been stipulated to have a value of \$180,000.00 and divide the proceeds from the sale of said boat equally. Plaintiff may elect to retain the boat and pay Defendant \$90,000.00. Said election and payment shall be made within 90 days of the entry of the Decree of Divorce.

10. Defendant is awarded child support for the parties' minor child in the sum of \$750.00 per month based upon Plaintiff's gross monthly income of \$8,333.00.


11. Defendant is awarded permanent alimony in the sum of

\$1,250.00 per month. Said alimony shall continue until the death of either party, Defendant's remarriage or unlawful co-habitation with an individual of the opposite sex.

12. Defendant is awarded judgment against Plaintiff in the sum of \$8,000.00 as and for attorney's fees.

DATED THIS 24 day of February, 1993.

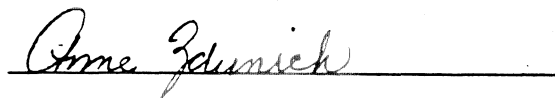
BY THE COURT


RAY M. HARDING
District Court Judge

MAILING CERTIFICATE

I hereby certify this 18th day of February, 1993, a true and correct copy of the foregoing Decree of Divorce was mailed, by placing the same in the United States Mail, postage pre-paid, addressed as follows:

Clark W. Sessions, Esq.
Dean C. Adreason, Esq.
Robert W. Cottle, Esq.
Campbell, Maack & Sessions
One Utah Center, 13th Floor
201 South Main Street
Salt Lake City, Utah 84111



Hales.dec

Tab D

HALES v. HALES

Civil No. 914401506DA

DEFENDANT'S MONTHLY INCOME AND LIVING EXPENSES

INCOME

Defendant has no source of income other than amounts being paid by Plaintiff to Defendant, as follows:

Cash (\$500.00 per week or \$2,167.00 per month)	\$2,167.00
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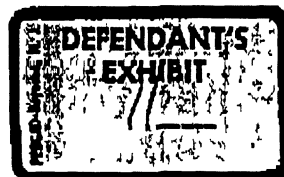
Payments made on behalf of Defendant

Mortgage	\$ 360.00	
Telephone (\$781.37)	65.11	
Gas (\$654.04)	54.50	
Electricity (\$1,378.25)	114.85	
Sewer/Water (\$579.00)	<u>48.25</u>	
		\$642.71

TOTAL INCOME	<u>\$2,809.71</u>
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EXPENSES

Mortgage		360.00
Telephone		65.11
Gas		54.50
Electricity		114.05
Sewer/Water		48.25
House cleaning/Fish Tank		120.00
House maintenance		74.46
Food		465.00
Personal (hair, beauty, nails)		110.00
Automobile		
Gas		100.00
Maintenance		291.30
Medical (Defendant/Corby)		
Health Insurance (estimated)		250.00
Prescriptions		113.98
Doctor/Dentist		250.00
School Supplies/Music Lesson-Total		20.00
Credit Cards		
R.C. Willey	25.00	
MasterCard	100.00	
AVCO Financial	64.00	
Discover	75.00	
ZCMI	50.00	
Nordstrom	<u>50.00</u>	
Credit Card Total		364.00



HALES v. HALES
Civil No. 914401506DA
DEFENDANT'S MONTHLY INCOME
AND LIVING EXPENSES
Page 2

Entertainment	75.00
Gifts and Christmas	270.00
Clothing	225.00
Tennis Expenses for Corby (lessons, equipment, memberships, training, supplies, tournament fees and travel)	1,111.83

TOTAL EXPENSES	<hr/> \$ <u>4,483.28</u>
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